

MARK JENDREK, P.C.

ATTORNEY AT LAW
800 SOUTH GAY STREET
SUITE 1910
KNOXVILLE, TENNESSEE 37929

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REPLY TO:
P.O. BOX 549
KNOXVILLE, TENNESSEE 37901
E-MAIL TO mj@jendrekpc.com

TELECOPY COVER SHEET

TO: Charla Dillon
Tennessee Regulatory Authority DATE: April 7, 2004

FAX #: 615/741-5015 PHONE #: 615/741-2904 x136

FROM: Mark Jendrek Number of pages, including cover sheet: 12
7

Should you experience difficulties receiving this transmission, please call (865) 824-1900.

COMMENTS

Ms. Dillon: The attached is for filing in Docket No. 03-00329. I am sending original plus 13 copies via FedEx, together with my firm's check in the amount of \$25.00, for receipt tomorrow. If you have any questions, please call.

Mark Jendrek

This transmission contains privileged and confidential information intended only for the use of the individual or entity named above. If you have received this transmission in error, please immediately notify us by telephone and return the original transmission to us at the above address via U.S. Postal Service. Thank you.

MARK JENDREK, P.C.

ATTORNEY AT LAW

800 SOUTH GAY STREET

SUITE 1910

KNOXVILLE, TENNESSEE 37929

March 15, 2004

865/824-1900

865/824-1910 FAX

ALSO ADMITTED IN MARYLAND

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REPLY TO:

P.O. BOX 549

KNOXVILLE, TENNESSEE 37901

E-MAIL TO: mj@jendrekpc.com

Ms. Charla Dillon, Docket Clerk
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Via Fax 615/741-5015
and FedEx

Re: Petition to Reconsider and to Intervene and/or for a Declaratory
Order; Docket No. 03-00329

Dear Ms. Dillon:

Enclosed is an original and 13 copies of a Petition to Reconsider and to Intervene and/or for a Declaratory Order, filed by East Sevier County Utility District in the above-referenced case. This is the original of the pleading I faxed to you earlier today.

Also enclosed is my firm's check in the amount of \$25.00 for the filing fee.

By copy of this letter and the enclosure, the Petition is being served on On-Site Systems, Inc.

If you have any questions, please call.

Very truly yours,



Mark Jendrek

Enclosures

cc: On-Site Systems, Inc.
East Sevier County Utility District

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: PETITION OF ON-SITE SYSTEMS, INC. TO AMEND ITS
CERTIFICATE OF CONVENIENCE AND NECESSITY**

Docket No. 03-00329

**PETITION FOR RECONSIDERATION , INTERVENTION,
AND/OR FOR A DECLARATORY ORDER**

Comes now East Sevier County Utility District ("District"), within 15 days after the entry of an Order in this cause, and respectfully requests the Tennessee Regulatory Authority ("Authority") reconsider the final order entered in this case on March 24, 2004, further requests the entry of an order allowing the District to Intervene in the matter, and/or requests the entry of an order declaring certain matters with respect to the applicability of the Authority's Order entered March 24, 2004. As grounds for the District's requests, the District states as follows

On May 9, 2003, On-Site Systems, Inc. ("On-Site") petitioned the Authority for an amendment to On-Site's Certificate of Convenience and Necessity to include substantially all of Sevier County, Tennessee. Filed simultaneously with that petition were a number of exhibits including tariff sheets and correspondence

from the community development director of the City of Pigeon Forge, Tennessee, and the County Executive for Sevier County, Tennessee

On May 13, 2003, Mike Gaines, on behalf of the Authority, inquired of On-Site, asking for clarification on six specific issues. A copy of that document is attached hereto as Exhibit A.

At least three of the six issues raised by Mr. Gaines are applicable to this Petition to Reconsider

Issue number two: "Is there an immediate need for service now in the proposed service areas? Has anyone applied for service to be supplied by On-Site Systems now? If so, where exactly are they located within the proposed service territory?"

Issue number three: "Provide an explanation as to why it is [in] the public interest that On-Site be granted the proposed service territory within Sevier County."

Issue number five: "Have all of the utility districts within the proposed service territory been notified of your intent to provide wastewater service?"

By correspondence dated May 16, 2003, On-Site filed its response to Mr. Gaines' issues. A copy of that response is attached hereto as Exhibit B.

Beyond the failure to provide a complete response to Mr. Gaines' questions, On-Site's response to Mr. Gaines' issue number two regarding "an immediate need

for service now in the proposed service area," attempts to lead the Authority to believe that there is a significant need in Sevier County for the service provided by On-Site. On-Site indicates that in the past three years On-Site has submitted 12 petitions to the Authority for service areas in Sevier County. What On-Site does not indicate in its response is that several of those petitions submitted by On-Site were submitted by On-Site without the property owner's knowledge or consent, and without any request of On-Site to provide service.

While the District is unaware of the nature of all 12 of the requests referred to by On-Site in its response, the District is specifically aware that On-Site's petitions to provide service to at least three projects, the Homestead, the Dollywood Project (Dreamcatcher Ridge), and Smoky Mountain Ridge, all of which are listed on the tariff sheets to On-Site's petition, were submitted without the knowledge or consent of the property owner, and with no request from the property owner for service. Indeed, at Smoky Mountain Ridge, the District is providing the requested service.

With respect to Smoky Mountain Ridge, when On-Site filed its petition, Smoky Mountain Ridge, L.L.C., the owner of the project, moved to intervene, pointing out that it had never made a request for service. The filing of the petition to intervene caused On-Site to withdraw its petition to amend. See Docket No. 03-00069.

Additionally, On-Site failed to respond in any way to Mr. Gaines' request for the exact location of the projects. To the extent the Authority based its decision, in any way, on On-Site's response to Mr. Gaines' inquiries, the decision was made on the basis of false and misleading information supplied by On-Site, and should not stand.

With respect to item three of Mr. Gaines' letter, "Provide an explanation as to why it is [in] the public interest that On-Site be granted the proposed service territory within Sevier County" there is absolutely no reason why the responses set forth by On-Site are not applicable on a development-by-development basis.

There are several providers of similar services in Sevier County: the District, Integrated Resource Management Utility, Inc., and others, all able and willing to provide similar services. To give On-Site a blanket certificate for the entire county, coupled with On-Site's subsequent actions regarding exclusivity, detailed below, specifically affects the District, has the effect of stifling competition, establishing a monopoly, and is the antithesis of being in the best interest of the public.

Contrary to On-Site's response, there is no waste of the Authority's time in On-Site's continuing "to petition one development at a time," to the extent On-Site petitions only those developments that actually request On-Site's service. On-Site cannot file petitions without the knowledge or consent of the property owners and with no request for service in the quantity On-Site has filed, and then turn around

and say there is such a demand for service that to petition one development at a time would be a waste of the Authority's time and resources. The flood of petitions is the creation of On-Site, not the result of actual requests for service, and simply reflects On-Site's predatory practices, from which it should not benefit.

The District suggests that if there indeed has been a waste of the Authority's time and resources, it is On-Site's filing of petitions without any request for service and without the knowledge and consent of the property owners. That activity is a waste of the Authority's time and resources.

With respect to item five of Mr. Gaines' letter, "Have all of the utility districts within the proposed service territory been notified of your intent to provide wastewater service?" On-Site specifically side-stepped Mr. Gaines' inquiry with respect to the District, by indicating that the District serves a portion of the east side of Sevier County and would be unaffected. On-Site had full knowledge, at the time of providing the response to Mr. Gaines, that the District served more than just the east side of Sevier County, and presumably perceives the District as a competitor.

Because the District does, in fact serve more than just the east side of Sevier County, the District has a direct interest in the service area which is the object of Docket No. 03-00329. The District's rights were affected by that petition, and the District was not noticed of this pending matter. As an entity whose rights are directly effected by this petition, On-Site had an obligation to notice the District.

It is or should be readily apparent to the Authority that had the District had notice of this pending matter, the District would have petitioned to intervene. In the Tennessee Wastewater Systems, Inc. (formerly known as On-Site Systems, Inc.) Petition to Amend its Certificate, Docket No. 04-00045, the day the District received notice of the petition, the District filed a Petition to Intervene. Had the District received notice of Tennessee Wastewater's previous action, the District would have similarly filed a Petition to Intervene.

On-Site was, no doubt, well aware of the District's position on this matter, chose not to provide notice, and avoided clearly responding to Mr. Gaines' issue number five by indicating that On-Site intended to exclude the District's chartered territory.

As explained in the District's petition to intervene in Docket No. 04-00045, the District has extended the provision of its services beyond its territorial limits, as it is authorized to do pursuant to the provisions of Tennessee Code Annotated Sections 7-51-401 and 7-82-302

As the District receives requests to do so, the District intends to continue the provision of services outside of its territorial boundaries.

Because the petition of On-Site seeks to include a broad territory with no specific description, this would have a deleterious effect on the District, particularly in the event one of the District's customers requested wastewater treatment services

from the District in an area claimed to be within that covered by On-Site's Certificate of Convenience and Necessity.

Representatives of On-Site have made assertions to both customers and prospective customers of the District, as well as to the District's engineers, that no entity other than On-Site will be allowed or authorized to provide wastewater treatment services to any customers in Sevier County without the express written consent of On-Site.

To the extent the legal consequences embodied in those representations are accurate, and no concession is made that they are, the effect is to give On-Site an exclusive right to provide wastewater services in all of Sevier County, other than the excluded areas which, as set forth above, have not been sufficiently delineated and specifically affects the Districts and its customers. This has a chilling effect on competition, and is not conducive to the provision of the most efficient wastewater treatment services at the most efficient rates for the rate payers. Again, this is the antithesis of serving the public interest.

A declaratory order to the effect that the Authority's March 24, 2004 Order does not provide On-Site with the exclusive right to provide wastewater services within the territory described in the Order is necessary and appropriate. Because the District's right to provide wastewater service may be affected by the amendment to On-Site's certificate of convenience and necessity set forth in the March 24th Order

in Docket No. 03-00329, the District was entitled to notice of that pending matter and/or is entitled to a declaratory order regarding the applicability of that Order. Because much of the information provided by On-Site is false and misleading information on which the Authority presumably relied in rendering its decision, the District respectfully requests the Authority grant its Petition to Reconsider and allow the District to Intervene or, set this matter for a hearing on the Authority's regularly scheduled docket.

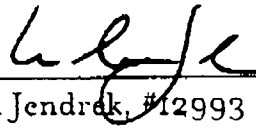
Alternatively, the District requests the entry of a declaratory order specifically providing that the Authority's March 24, 2004 Order does not give On-Site the exclusive right to provide wastewater services within the territory described in the Order.

Finally, because the issues in this cause are substantially similar to those issues in the contested case represented by Docket No. 04-00045, the District further requests that after granting the District's Petition to Reconsider and allow the District to Intervene, any action on the reconsideration or the District's request for a Declaratory Order be stayed pending the outcome of the contested case hearing in Docket No. 04-00045. It would truly be a waste of the Authority's time and resources to hold two contested cases on the same issue. Because a contested case hearing in Docket No. 04-00045 is currently pending, staying any action following the grant of the District's Petition to Reconsider and to Intervene in this case until

the outcome of Docket No. 04-00045 would serve the best interests of time and efficiency.

WHEREFORE, East Sevier County Utility District prays the Authority grant this Petition for Reconsideration and permit the District to Intervene, and stay any further action thereon pending the outcome of the contested case hearing in Docket No. 04-00045 of which the matters contemplated by the District's Request for a Declaratory Order are currently set to be heard.

Respectfully submitted this 7th day of April, 2004



Mark Jendrek, #12993

MARK JENDREK, P.C.

P.O. Box 549

Knoxville, Tennessee 37901

865/824-1900

Attorney for East Sevier County Utility District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document has been served upon the following persons by hand delivery or by United States Mail, with proper postage thereon.

Charles Pickney, Jr., President
On-Site Systems, Inc.
7628 River Road Pike
Nashville, Tennessee 37209

This 7th day of April, 2004.



Mark Jendrek

**TENNESSEE REGULATORY AUTHORITY
RECEIVED**

Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director

2003 MAY 14 AM 11:00



T.R.A. DOCKET ROOM

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

May 13, 2003

Mr. Charles Pickney
On-Site Systems, Inc.
7638 River Road Pike
Nashville, TN 37209-5733

RE: Dkt. # 03-00329 – Petition to amend Certificate of Convenience and Necessity

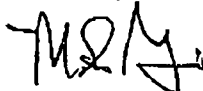
Dear Mr. Pickney:

After reviewing your petition we have discovered that certain information is needed to complete the application. Please provide the following information.

1. A rate of \$35.11 is indicated in the petition for residential service. Will this rate be same no matter what type of system is used (sand gravel or lagoon) within the proposed service area?
2. Is there an immediate need for service now in the proposed service areas? Has anyone applied for service to be supplied by On-Site Systems now? If so, where exactly are they located within the proposed service territory?
3. Provide an explanation as to why it is the public interest that On-Site be granted the proposed service territory within Sevier County?
4. Have all of the other incorporated areas of Sevier County, besides City of Pigeon Forge and Sevier County, been contacted about providing service to the proposed service territory? If so, provide documentation that these entities have been contacted concerning the expansion of your wastewater system.
5. Have all of the utility districts within the proposed service territory been notified of your intent to provide wastewater service?
6. Has the county planning commission been notified of your intent to provide wastewater service to proposed service territory? If so, provide written documentation that they have been contacted.

Please respond by May 27, 2003. Thank you for your attention to this matter. If you should have any questions, you may contact Butch Phillips at (615) 741-2904, ext. 183.

Sincerely,

A handwritten signature in black ink, appearing to read "MG", with a stylized flourish at the end.

Mike Gaines
Chief
Energy and Water Division

ecp03-29onsite

RECEIVED

On-Site Systems, Inc.

7638 River Road Pike

Nashville, TN 37209

Office: (615) 356-2880

Fax: (615) 356-7295

MAY 16 PM 1:53

R.A. COOLEY ROOM

May 16, 2003

Mr. Mike Gaines, Chief
Energy and Water Division
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE. Docket # 03-00329 - Petition to amend Certificate of Convenience and Necessity

Dear Mr. Gaines:

Below please find our response to your data request for the above-referenced application

1. A rate of \$35.11 is indicated in the petition for residential service. Will this rate be same no matter what type of system is used (sand gravel or lagoon) within the proposed service area?

The rates that residential customers pay is based on the components of the system that serves them. For systems comprised of watertight effluent collection, sand-gravel filter treatment and subsurface drip irrigation disposal, the rate will be \$35.11. The appropriate rate for other similar systems using packed bed, fixed film treatment (Advantex and Bioclere would also be \$35.11.

We do not presently have any systems in Sevier County that are served by a lagoon treatment system, however, it is possible that we will have in the future. The appropriate monthly rate for a system with watertight effluent collection, lagoon treatment and subsurface drip irrigation disposal is \$30.98.

EXHIBIT B

2. Is there an immediate need for service now in the proposed service areas? Has anyone applied for service to be supplied by On-Site Systems now? If so, where exactly are they located within the proposed service territory?

There are several developers who have expressed a desire for sewer service within the county. In the last three years, we have submitted twelve petitions to the Tennessee Regulatory Authority for service areas in Sevier County. Additionally, we currently have a petition pending for another project – Black Bear Ridge, Docket Number 03-00192 and are processing developer requests for two additional projects (Smoky Cove and Greystone Lodge).

3. Provide an explanation as to why it is the public interest that On-Site be granted the proposed service territory within Sevier County.

It is in the public interest that On-Site Systems, Inc. be granted the proposed service area in Sevier County for several reasons. There is a significant need for new developments in the county to have sewer service. Due to the terrain situation in the county, the proximity to the Great Smokey Mountain National Park and the need to keep scenic streams in the area clean, it is very important that sewer systems for new developments employ treatment of wastewater to a very high level of cleanliness and not discharge into streams. To the best of my knowledge, no other provider of sewer services in the county is using a system comprised of a sealed, watertight collection system, a fixed film reactor and subsurface drip irrigation disposal system. At On-Site Systems, Inc, our mission is to provide affordable sewer service in communities where it is presently unavailable, through the use of proven, environmentally safe technology. Since it is our desire to serve consumers all across the state, it is consistent that we are petitioning to serve a larger portion of Sevier County. If we continue to petition one development at a time, at the rate of twelve ever three years, we could reasonably expect to submit another thirty-six (36) petitions in Sevier County in the next nine (9) years. This seems to me to be a waste of time and resources of the Tennessee Regulatory Authority, On-Site Systems, and everyone else involved. A single petition is a far better alternative.

4. Have all of the other incorporated areas of Sevier County, besides City of Pigeon Forge and Sevier County, been contacted about providing service to the proposed service territory? If so, provide documentation that these entities have been contacted concerning the expansion of your wastewater system.

Letters were sent to Mr. Jim Coykendal, Director of Planning, Pittman Center Planning Commission for the City of Pittman Center; Mr. David W. Ball, Director of Planning, City of Gatlinburg; and Bryan Atchley, Mayor for the City of Sevierville (see attached letters). As of this date, no response has been received. We will forward any additional responses upon receipt.

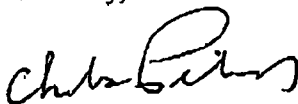
5. Have all of the utility districts within the proposed service territory been notified of your intent to provide wastewater service?

Webb Creek Utility District was contacted by phone and we were advised that they only serve the area of Pittman Center. East Sevier County Utility District serves a portion of the east side of the county and we excluded their chartered territory. Mr. Larry Waters, County Executive for Sevier County, provided the legal document describing that territory.

6. Has the county planning commission been notified of your intent to provide wastewater service to proposed service territory? If so, provide written documentation that they have been contacted.

David Taylor, Director for the Planning Commission works for the County Executive for Sevier County - Larry Waters - to whom we sent a letter. His response was incorporated in the original petition, which speaks for the County as well as the Planning Commission. Letters were sent to the Directors of Planning for the City of Gatlinburg, City of Pigeon Forge, and the City of Pittman Center. (See attached letters) As previously stated, no responses have been received but will be forwarded upon receipt.

Sincerely,



Charles Pickney, Jr.
President